United Nations

Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

General Assembly
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Supplement No. 37 (A/52/37)

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United Nations · New York, 1997

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[Original: English, French, Russian, Spanish]

[31 March 1997]

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I. INTRODUCTION

1. The Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996 was convened in accordance with paragraphs 9 and 10 of that resolution and met at United Nations Headquarters from 24 February to 7 March 1997.

2. In accordance with paragraph 9 of General Assembly resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.[1]

3. On behalf of the Secretary-General, the Legal Counsel, Mr. Hans Corell, opened the session of the Ad Hoc Committee and made a statement.

4. The Director of the Codification Division of the Office of Legal Affairs, Mr. Roy S. Lee, acted as Secretary of the Ad Hoc Committee, assisted by the Deputy Director, Mr. Manuel Rama-Montaldo (Deputy Secretary) and assistant secretaries Ms. Sachiko Kuwabara-Yamamoto, Ms. Christiane Bourloyannis-Vrailas, Mr. David Hutchinson, Mr. Mpazi Sinjela, Ms. Darlene Prescott and Mr. Renan Villacis of the Codification Division.

5. At its 1st, 2nd and 3rd meetings, on 24 and 27 February 1997, the Ad Hoc Committee elected its Bureau, as follows:

Chairman: Mr. Philippe Kirsch (Canada)

Vice-Chairmen: Mr. Carlos Fernando Díaz (Costa Rica)
Ms. Samia Ladgham (Tunisia)
Mr. Rohan Perera (Sri Lanka)

Rapporteur: Mr. Martin Šmejkal (Czech Republic)

6. Also at its 1st meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.1):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Elaboration, pursuant to paragraph 10 of General Assembly resolution 51/210 of 17 December 1996, of an international convention for the suppression of terrorist bombings.

6. Adoption of the report.

7. The Ad Hoc Committee had before it a preliminary working document containing the draft of an international convention for the suppression of terrorist bombings submitted by France on behalf of the Group of Seven major industrialized countries and the Russian Federation (A/AC.252/L.2). The Committee also had before it a draft convention on the suppression of acts of nuclear terrorism submitted by the Russian Federation (A/AC.252/L.3).

II. PROCEEDINGS

8. The Ad Hoc Committee heard general statements at its 1st meeting, on 24 February 1997.

9. At the same meeting, the Ad Hoc Committee decided to conduct its work in the form of a Working Group of the Whole. The Bureau and the secretariat of the Ad Hoc Committee also served as the Bureau and secretariat of the Working Group. It was also decided to use the preliminary working document as a basis of its work (see annex II) and to proceed to an article-by-article discussion of the text. Delegates were invited to submit amendments and proposals.

10. The Working Group of the Whole proceeded in three stages. In its first stage, the Working Group conducted a first reading from articles 1 to 12 during which oral and written amendments and proposals were submitted and considered. In this connection, it is the view of the Committee that the oral amendments and proposals will continue to be treated on an equal footing with those written amendments and proposals in the future work of the Committee.

11. In the second stage of the work, the Bureau, on the basis of the discussions in the Working Group, prepared texts of articles 1, 2, 3 and 12 ter (A/AC.252/1997/CRP.3), articles 4 to 10 bis (A/AC.252/1997/CRP.1) and articles 11 to 12 bis (A/AC.252/1997/CRP.2) (see annex I.B).

12. In the third stage, the Working Group agreed that the work would continue on the basis of the above-mentioned documents and in the framework of two consultation groups entrusted respectively with articles 1 to 3 and 12 ter and articles 4 to 12 and 12 bis. Mr. Rohan Perera (Sri Lanka) and Ms. Samia Ladgham (Tunisia), Vice-Chairmen, chaired the consultation groups.

13. On the basis of the discussion in the informal consultations, the Bureau prepared revised texts of articles 4 to 12 bis (A/AC.252/1997/CRP.6) and articles 1 to 3 and 12 ter (A/AC.252/1997/CRP.6/Add.1) (see annex I.A). The texts prepared by the Bureau are intended simply to further facilitate the future work of the Committee. They do not replace or substitute for any of the written or oral texts proposed by delegations.

14. At the 4th meeting, the Chairman made an oral report on the work of the Working Group. Ms. Ladgham and Mr. Perera made oral reports on the work conducted in the informal consultations.

15. Annex III contains the full texts of the written amendments and proposals submitted by delegations: proposal by France on article 2 (A/AC.252/1997/WP.1); proposal by the Russian Federation on article 1 (A/AC.252/1997/WP.2); proposal by Malawi on article 5 (A/AC.252/1997/WP.3); proposal by Sudan on article 5 (A/AC.252/1997/WP.4); proposal by France on article 8 (A/AC.252/1997/WP.5); proposal by Portugal on article 7, (A/AC.252/1997/WP.6); proposal by Greece and Portugal on article 7, (A/AC.252/1997/WP.7); proposal by Guatemala on article 8 (A/AC.252/1997/WP.8); proposal by the Netherlands on articles 2, 3 to 6, and article 9 bis (A/AC.252/1997/WP.9); revised proposal on article 1 submitted on behalf of the Group of Seven major industrialized countries and the Russian Federation (A/AC.252/1997/WP.10); proposal by the Islamic Republic of Iran on article 11 (A/AC.252/1997/WP.11); revised proposal for articles 2 and 3 submitted on behalf of the Group of Seven major industrialized countries and the Russian Federation (A/AC.252/1997/WP.12); proposed amendments by the Republic of Korea to articles 1 to 8 and 10 (A/AC.252/1997/WP.13); proposal by Greece on

article 1 (A/AC.252/1997/WP.14); proposal by the Holy See on article 6 (A/AC.252/1997/WP.15); proposals by Pakistan on the preamble and articles 1 to 3 and 8 (A/AC.252/1997/WP.16); proposal by the United States of America on article 2 (A/AC.252/1997/WP.17); proposal by Italy on article 2 (A/AC.252/1997/WP.18); proposal by the Holy See on article 1 (A/AC.252/1997/WP.19); proposed amendments by Colombia to WP.10 and WP.12 of CRP.1 and 2 (A/AC.252/1997/WP.20); proposal by France on article 8 of CRP.1 (A/AC.252/1997/WP.21); proposal by the former Yugoslav Republic of Macedonia on the preamble (A/AC.252/1997/WP.22); proposal by the Russian Federation on article 1 (A/AC.252/1997/WP.23); proposal by Guatemala on article 1, paragraph 1, of CRP.3 (A/AC.252/1997/WP.24); proposal by France and Ireland on article 6 (A/AC.252/1997/WP.25); proposal by the United States of America on article 6 of CRP.1 (A/AC.252/1997/WP.26); proposal by the Netherlands on articles 1 and 2 (A/AC.252/1997/WP.27); proposal by Algeria on the title of the draft convention (A/AC.252/1997/WP.28); proposal by Canada and China on article 7 (A/AC.252/1997/WP.29); proposal by Switzerland on article 3 (A/AC.252/1997/WP.30); amendments proposed by Mexico on articles 8 and 8 bis of CRP.1 (A/AC.252/1997/WP.31); and proposal by the Netherlands and the United States of America on article 1, and article 2 and elsewhere in the Convention (A/AC.252/1997/WP.32).

16. Annex IV contains an informal summary of the discussions in the plenary and the Working Group prepared by the Rapporteur for reference purposes only and not as a record of the discussions.

Notes

[1] For the membership of the Ad Hoc Committee at its first session, see A/AC.252/INF.1.

ANNEX I

A. Revised texts of articles 1 to 12 ter* proposed by the Bureau on the basis of the discussions in the informal consultations,** reproduced together with the preamble and articles 13 to 17*** of document A/AC.252/L.2

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms,

Recalling the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "[t]he States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Recalling further that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Noting that terrorist attacks by means of bombs, explosives or other incendiary or lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Have agreed as follows:

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* For the original text of these articles, see annex II below.

** See paragraph 13 of the present report. These revised texts were originally contained in documents A/AC.252/1997/CRP.6 and Add.1.

*** The preamble and articles 13 to 17 of document A/AC.252/L.2 are reproduced here for reference purposes only. They have not been discussed by the Ad Hoc Committee.

Article 1

For the purposes of this Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by civilian or military officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Infrastructure facility" includes any publicly or privately owned facility providing or distributing services for the benefit of the public, including water, sewage, energy, fuel or communications.

3. "Lethal device" means any weapon, device or substance that is intended, or has the capability, to cause death or serious bodily injury or material damage through the release, dissemination or impact of:

(a) Toxic chemicals; or

(b) Biological agents or toxins; or

(c) Radiation or radioactive material.

4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their command and control.

5. "Place of public use" includes any building, land, street, waterway or other location that is accessible or open, in whole or in part, to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" includes all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive device, incendiary device or lethal device in, into or affecting a place of public use, a government or other public facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of public or private property likely to cause serious disruption of economic life; or

(c) Under circumstances in which his action is likely to create a grave risk of death or serious bodily injury; or

(d) Under circumstances in which his action is likely to create a state of terror among the general public.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2;

(b) bis. In any other way participates in the planning or preparation of the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose.

Article 3

This Convention shall not apply to the delivery, placement, discharge or detonation of an explosive device, incendiary device or lethal device by the military forces of a State in connection with their official duties.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is operated by the Government of that State or is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(a) bis The offence is committed in, into or affecting a government facility of that State, including an embassy or other diplomatic or consular premises of that State; or

(b) The offence is committed by a stateless person who has his habitual residence in the territory of that State; or

(c) The offence is committed in an attempt to compel that State to do or abstain from doing any act.

2 bis. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party subsequently rescinds that jurisdiction it shall notify the Secretary-General.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 or 2 of this article.

4. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 6

1. Upon being satisfied that the circumstances so warrant, the State Party in the territory of which the offender or alleged offender is present shall take appropriate measures under its internal law so as to ensure that person's presence for the purpose of prosecution or extradition. Such State shall immediately make a preliminary inquiry, in accordance with its own legislation.

2. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

3. The rights referred to in paragraph 2 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 2 are intended.

4. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States which have established jurisdiction in accordance with article 5, paragraphs 1 and 2, and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The

State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly inform the said States of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory of which the offender or the alleged offender is present shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve any sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 8

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with paragraphs 1 and 2 of article 5.

5. The provisions of all extradition treaties and arrangements applicable between States Parties are modified as between State Parties to the extent that they are incompatible with this Convention.

6. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence set forth in article 2 has been made

for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion, or that that person's position may be prejudiced for any of these reasons.

7. For the purposes of extradition between States Parties, none of the offences set forth in article 2 shall be regarded as a political offence or as an offence connected with a political offence or as offence inspired by political motives.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

Article 10

1. A person in the custody of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. A State Party from which a person is to be transferred in accordance with this article may require that that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of that Party in respect of acts or convictions anterior to his or her departure from the territory of the State from which that person was transferred.

Article 10 bis

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 11

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(a) By taking all practicable measures, including, if necessary, adapting their national legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of acts mentioned in article 2;

(b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2;

(c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, and cooperation and transfer of technology, equipment and related materials.

Article 12

The State Party where the alleged offender is prosecuted shall, in accordance with its laws, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties. This requirement shall not apply where no other State Party has jurisdiction under article 5.

Article 12 bis

The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 12 ter

Nothing in this Convention shall be interpreted as affecting other rights and obligations under international law, in particular international humanitarian law.

Article 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by request, in conformity with the Statute of the Court.

2. Each State may at the time of ratification or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 14

1. This Convention shall be open for signature by all States until [date] at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 15

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 16

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 17

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on [date].

B. Revised texts of articles 1 to 12 ter, proposed by the Bureau on the basis of the discussions in the Working Group*

Article 1

For the purposes of this Convention:

1. "Government or other public facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by civilian or military officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Infrastructure facility" includes any publicly or privately owned facility providing or distributing services for the benefit of the public, including water, sewage, energy, fuel or communications.

3. "Lethal device" means any weapon, device or substance that is intended, or has the capability, to cause death or serious bodily injury or material damage through the release, dissemination, or impact of:

(a) Toxic chemicals; or

(b) Biological agents or toxins; or

(c) Radiation or radioactive material.

4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their command and control.

5. "Place of public use" includes any building, land, street, waterway or other location that is accessible or open, in whole or in part, to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious,

* See paragraph 11 of the present report. These revised texts were originally contained in documents A/AC.252/1987/CRP.1, CRP.2 and CRP.3.

governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" includes all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive device, incendiary device or lethal device in, into or affecting a place of public use, a government or other public facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of public or private property likely to cause serious disruption of economic, social and cultural life; or

(c) Under circumstances in which his action is likely to create a grave risk of death or serious bodily injury to persons; or

(d) Under circumstances in which his action is likely to create panic among the general public.

2. Any person also commits an offence if that person manufactures, possesses, transfers or acquires an explosive device, incendiary device or lethal device with the intent that such a device be used for the commission of an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 3;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 3;

(b) bis In any other way participates in the planning or preparation of the commission, by a group of persons acting with a common purpose, of one or more offences as set forth in paragraph 1 or 3 and takes a concrete step in furtherance of the commission of such an offence.

Article 3

This Convention shall not apply to the delivery, placement, discharge or detonation of an explosive device, incendiary device or lethal device by the military forces of a State.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences within the scope of this Convention as set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

1. Each State Party shall take such lawful measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the national territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is operated by the Government of that State or is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(a) bis The offence is committed in or against an embassy or other diplomatic or consular premises of a State Party; or

(b) The offence is committed by a stateless person who has his habitual residence in the territory of that State; or

(c) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(d) The offence is committed in an attempt to intimidate, coerce or retaliate against a civilian population of that State.

2 bis. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party subsequently rescinds that jurisdiction it shall notify the Secretary-General.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 or 2 of this article.

4. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

5. This Convention does not exclude the exercise of any criminal jurisdiction by such international tribunal as may have jurisdiction with respect to offences under this Convention.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender or convicted person is present shall, in accordance with its laws, take measures, such as taking that person into custody, to ensure that person's presence for such time as is reasonable to enable any criminal or extradition proceedings to be instituted. Such State shall immediately make a preliminary inquiry, in accordance with its own legislation.

2. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in that territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

3. The rights referred to in paragraph 2 shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender or convicted person is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 2 are intended.

4. The provisions of paragraphs 2 and 3 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 5 (1) (c) to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 5, paragraphs 1 and 2, and, if it considers it advisable, any other interested States and the Secretary-General of the United Nations, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly inform the said States of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory of which the offender or the alleged offender is present shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that

State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve any sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 8

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with paragraphs 1 and 2 of article 5.

5. The provisions of all mutual legal assistance and extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall consider whether there are any substantial grounds for believing:

(a) That the request for extradition for an offence set forth in article 2 has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion; or

(b) That person's position may be prejudiced:

(i) For any of the reasons mentioned in subparagraph (a) of this paragraph, or

(ii) For the reason that communication with that person by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

7. For the purposes of extradition between States Parties, none of the offences set forth in article 2 shall be regarded as a political offence or as an offence connected with a political offence or as offence inspired by political motives.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

Article 10

1. A person in the custody of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. A person transferred to another State in accordance with this article, whatever that person's nationality, shall not be prosecuted or detained or

subjected to any other restriction of his or her personal liberty in the territory of that Party in respect of acts or convictions anterior to his or her departure from the territory of the State from which that person was transferred.

Article 10 bis

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees provided by the law of the State in the territory of which that person is present and by relevant provisions of international law, including international standards of human rights.

Article 11

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(a) By taking all appropriate measures, including, if necessary, adapting their national legislation, to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, finance or engage in the perpetration of acts mentioned in article 2;

(b) By exchanging information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2;

(c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, and cooperation and transfer of technology, equipment and related materials.

Article 12

The State Party where the alleged offender is prosecuted shall, in accordance with its laws, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties.

Article 12 bis

The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 12 ter

Nothing in this Convention shall be interpreted as affecting the rights and obligations deriving from international law, in particular international humanitarian law.

ANNEX II

Preliminary working document submitted by France on behalf of the Group of Seven major industrialized countries and the Russian Federation*

International Convention for the Suppression of Terrorist Bombings

The General Assembly,

Considering that the progressive development and codification of international law contribute to the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Mindful of the need to conclude, under the auspices of the United Nations, an international convention for the suppression of terrorist bombings,

Recalling its resolution 49/60 of 9 December 1994, approving the Declaration on Measures to Eliminate International Terrorism,

Further recalling its resolution 51/210 of 17 December 1996 which established the ad hoc committee to draft an International Convention for the Suppression of Terrorist Bombings,

Having considered the draft Convention prepared by the ad hoc committee in pursuance of resolution 51/210,

Adopts and opens for signature and ratification or for accession the International Convention for the Suppression of Terrorist Bombings, the text of which is annexed hereto.

Annex

International Convention for the Suppression of Terrorist Bombings

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms,

Recalling the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "[t]he States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

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* Originally issued under the symbol A/AC.252/L.2.

Recalling further that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Noting that terrorist attacks by means of bombs, explosives or other incendiary or lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Have agreed as follows:

Article 1

For purposes of this Convention:

1. "Government facility" includes any permanent or temporary facility or conveyance, wherever located, used or occupied by civilian or military employees of a governmental or administrative authority in connection with the employees' official duties, whether such facility is owned, leased, possessed or otherwise utilized by such authority.

2. "Infrastructure facility" includes any publicly or privately owned facility providing or distributing services for the benefit of the public, including water, sewage, energy, fuel or communications.

3. "Lethal device" means any weapon or device that is intended, or has the capability, to cause death or serious bodily injury through the release, dissemination or impact of:

(a) Toxic chemicals;

(b) Biological agents or toxins;

(c) Radiation or radioactive material.

4. "Organized military forces of a State" means the armed forces of a State which are organized, trained and equipped for the primary purpose of national self-defence, and persons who are authorized to accompany those armed forces.

5. "Place of general public use" includes any building, land, street, waterway or other locations that are accessible or open to members of the public in whole or in part, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational,

religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" includes all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for the transportation by ground, sea or air of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates a bomb, explosive or incendiary device, or lethal device in, into or affecting a place of general public use, a government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

(b) Under circumstances which indicate that the person knew or should have known that his conduct would create a substantial risk of death or serious bodily injury.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Subject to the constitutional principles and the basic concepts of the legal systems of States Parties, a person also commits an offence if that person engages in conduct which constitutes participation in, association or conspiracy to commit, or aiding, abetting, facilitating or counselling the commission of an offence as set forth in paragraph 1.[a]

Article 3

1. This Convention shall not apply to the delivery, placement, discharge or detonation of a bomb, explosive or incendiary device, or lethal device, by the organized military forces of a State.

2. Nothing in this Convention shall be interpreted as detracting from other obligations imposed upon States by international humanitarian law.

Article 4[b]

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

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[a] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 ("United Nations Narcotics Convention"), article 3.1 (c) (iv).

[b] International Convention against the Taking of Hostages, 1979 ("Hostages Convention"), article 2; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 ("IMO Maritime Navigation Convention"), article 5.

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5[c]

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State;

(b) The offence is committed by a stateless person who has his habitual residence in the territory of that State; or

(c) The offence is committed in an attempt to intimidate, coerce or retaliate against a civilian population of that State or to compel that State to do or abstain from doing any act.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 or 2 of this article.[d]

4. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.[e]

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its laws, take that person into custody or take other measures to ensure that person's presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.[f]

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[c] Adaptation of Hostages Convention, article 5; IMO Maritime Navigation Convention, article 6.

[d] Hostages Convention, article 6 (4); IMO Maritime Navigation Convention, article 5 (2).

[e] United Nations Narcotics Convention, article 4.3.

[f] Hostages Convention, article 6 (1); IMO Maritime Navigation Convention, article 7 (1).

2. Such State shall immediately make a preliminary inquiry, in accordance with its own legislation.[g]

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to establish such communication or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State.[h]

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.[i]

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 5 (1) (c) to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.[j]

6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 5, paragraph 1, and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.[k]

Article 7[l]

1. The State Party in the territory of which the offender or the alleged offender is found shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that

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[g] Hostages Convention, article 6 (1); IMO Maritime Navigation Convention, article 7 (2).

[h] Hostages Convention, article 6 (3); IMO Maritime Navigation Convention, article 7 (3).

[i] Hostages Convention, article 6 (4); IMO Maritime Navigation Convention, article 7 (4).

[j] Hostages Convention, article 6 (5).

[k] IMO Maritime Navigation Convention, article 7 (6).

[l] Hostages Convention, article 8; IMO Maritime Navigation Convention, article 10 (para. 2 of article 7 is a new proposal).

State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. If a State Party would be permitted under its law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve any sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and the State seeking the extradition of the person agrees to that condition, such a conditional extradition or surrender shall be sufficient to obviate the obligation set forth in paragraph 1.

3. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

Article 8

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.[m]

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.[n]

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.[o]

4. The offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.[p]

5. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties

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[m] Hostages Convention, article 10 (1); IMO Maritime Navigation Convention, article 11 (1).

[n] Hostages Convention, article 10 (2); IMO Maritime Navigation Convention, article 11 (2).

[o] Hostages Convention, article 10 (3); IMO Maritime Navigation Convention, article 11 (3).

[p] Hostages Convention, article 10 (4).

are modified as between States Parties to the extent that they are incompatible with this Convention.[q]

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.[r]

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford one another assistance in accordance with their national law.[s]

Article 10

1. A person in the custody of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention shall be transferred if:

(a) The person consents; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred as soon as circumstances permit or as otherwise agreed by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence imposed in the State from which he was transferred for time served in the custody of the State to which he was transferred.

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[q] Ibid., article 9 (2); IMO Maritime Navigation Convention, article 11 (7).

[r] Hostages Convention, article 11 (1); IMO Maritime Navigation Convention, article 12 (1).

[s] IMO Maritime Navigation Convention, article 12 (2).

Article 11[t]

States Parties shall cooperate in the prevention of the offences set forth in article 2, in particular by:

(a) Taking all appropriate measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;

(b) Exchanging information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2.

Article 12[u]

The State Party where the alleged offender is prosecuted shall, in accordance with its laws, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties concerned. This requirement shall not apply where no other State Party has jurisdiction under article 5.

Article 13[v]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by request, in conformity with the Statute of the Court.

2. Each State may at the time of ratification or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 14[w]

1. This Convention shall be open for signature by all States until [date] at United Nations Headquarters in New York.

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[t] Ibid., article 13 (1).

[u] Hostages Convention, article 7.

[v] Ibid., article 16; IMO Maritime Navigation Convention, article 16.

[w] Hostages Convention, article 17.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 15[x]

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 16[y]

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 17[z]

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on [date].

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[x] Ibid., article 18.

[y] Ibid., article 19.

[z] Ibid., article 20.

ANNEX III

Written amendments and proposals submitted by delegations

1. Proposal submitted by France (A/AC.252/1997/WP.1)

Article 2

Paragraph 1 (b)

(b) Under circumstances which indicate that the person knew or should have known that his conduct would create a substantial risk of death or serious bodily injury to many people, owing to the extent of the damage that it might cause.

Paragraph 3

3. A person also commits an offence if that person engages in conduct which constitutes aiding, abetting or facilitating the commission of an offence as set forth in paragraph 1.

2. Proposal submitted by the Russian Federation (A/AC.252/1997/WP.2)

Article 1, paragraph 1

1. "Government facility" includes any permanent or temporary facility or conveyance, wherever located, used or occupied by civilian or military employees of a State power or administrative authority of any level ...

3. Proposal submitted by Malawi (A/AC.252/1997/WP.3)

Article 5, (new) paragraph 5

Alternative 1

5. Persons charged with offences under this Convention may be tried by such international tribunal as may have jurisdiction with respect to those States Parties which shall have accepted its jurisdiction.

(Adaptation of article VI of the Genocide Convention)

Alternative 2

5. This Convention does not exclude the exercise of any criminal jurisdiction by such international tribunal as may have jurisdiction with respect to offences under this Convention.

(Adaptation of article 5, paragraph 4, of the preliminary working draft)

4. Proposal submitted by the Sudan (A/AC.252/1997/WP.4)

Article 5, paragraphs 1 and 2

1. Upon relevant facts being reasonably established,* each Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when ...

2. Upon relevant facts being reasonably established, a State Party may also establish its jurisdiction over any such offence when ...

5. Proposal submitted by France (A/AC.252/1997/WP.5)

Article 8, paragraph 5 and (new) paragraph 6

5. With respect to the offences as defined in this Convention, the provisions of all mutual assistance and extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

6. No provision of this Convention shall be interpreted as an obligation to extradite if the State Party has serious reasons to believe that the extradition request arising from an offence referred to in article 2 was submitted for the purposes of prosecuting or punishing a person on the grounds of race, religion, nationality or political opinions, or that the situation of the said person is liable to be exacerbated for one or another of these reasons.

(Adapted from article 5 of the European Convention for the Suppression of Terrorism of 27 January 1977)

6. Proposal submitted by Portugal (A/AC.252/1997/WP.6)

Article 7, paragraph 2

2. Whenever a State Party is permitted under its law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve any sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought, and that State and the State seeking the extradition of the person agree with that option, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

7. Proposal submitted by Greece and Portugal (A/AC.252/1997/WP.7)

Article 7, paragraph 3

3. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings, in accordance with international

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* In these proposals changes in wording or introduction of new words or phrases are indicated by underlining.

law, as well as enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

8. Proposal submitted by Guatemala (A/AC.252/1997/WP.8)

Article 8

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties to this Convention prior to its entry into force. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. If this obligation is not complied with, as regards a particular treaty, such offences shall be deemed to be included in it.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, such a request shall constitute a sufficient legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States Parties to this Convention.

5. With respect to the application of this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention or may impede or hinder its application.

9. Proposals submitted by the Netherlands (A/AC.252/1997/WP.9)

Articles 2, paragraph 1; 3, paragraph 1; and 9 bis

Article 2, paragraph 1

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates a bomb, explosive or incendiary device, or lethal device in, into or affecting a place of general public use, a government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; and/or

(b) With the intent to cause serious disruption of economic and social life; or

(c) Under circumstances which indicate that the person knew or should have known that his conduct would create a substantial risk of death, serious bodily injury or serious disruption of economic and social life.

Article 3, paragraph 1

1. This Convention shall not apply to the [legitimate] delivery, placement, discharge or detonation of a bomb, explosive or incendiary device, or lethal device by a State Party in accordance with national and international law.

Article 9 bis

9 bis. Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees provided by the law of the State in the territory of which that person is present and by relevant provisions of international law, including international standards of human rights.

(Based on article 7(3) in A/AC.252/L.2)*

10. Revised proposal submitted on behalf of the Group of Seven major industrialized countries and the Russian Federation (A/AC.252/1997/WP.10)

Article 1

1. "Government facility" includes any permanent or temporary facility or conveyance, wherever located,

(a) That is used or occupied by civilian or military employees or officials, including legislative or judicial officials, of a State or any other public authority, or by employees or officials of an intergovernmental organization; and

(b) That is so used or occupied by any such employees or officials in connection with their official duties;

whether such facility is owned, leased, possessed or otherwise utilized by such State, other public authority or intergovernmental organization.

2. "Infrastructure facility" includes any publicly or privately owned facility providing or distributing services for the benefit of the public, including water, sewage, energy, fuel or communications.

3. "Lethal device" means any weapon or device that is intended, or has the capability, to cause death or serious bodily injury through the release, dissemination, or impact of:

(a) Toxic chemicals;

(b) Biological agents or toxins; or

(c) Radiation or radioactive material.

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* The relevant text is contained in annex II above.

4. "Organized military forces of a State" means the armed forces of a State which are organized, trained and equipped for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their command and control.

5. "Place of general public use" includes any building, land, street, waterway or other location that is accessible or open, in whole or in part, to members of the public, whether continuously, periodically or occasionally.

6. "Public transportation system" includes all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

11. Proposal submitted by the Islamic Republic of Iran (A/AC.252/1997/WP.11)

Article 11, paragraphs (a) bis and (b)

Paragraph (a) bis

(a) bis Accelerating research and development regarding methods of detection of explosives and other harmful substances that can cause death or injury, undertaking consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, and promoting cooperation and transfer of technology, equipment and related materials, where appropriate;

Paragraph (b)

Add the words "accurate and verified" before the word "information".

12. Revised proposal submitted on behalf of the Group of Seven major industrialized countries and the Russian Federation (A/AC.252/1997/WP.12)

Articles 2 and 3

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive device, incendiary device or lethal device in, into or affecting a place of general public use, a government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury;

(b) With the intent to cause extensive destruction of property likely to endanger persons; or

(c) Under circumstances in which his action is likely to create a grave risk of death or serious bodily injury to persons.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person participates as an accomplice in an offence as set forth in paragraph 1 or 2, or organizes or directs others to commit such an offence.

Article 3

1. This Convention shall not apply to the delivery, placement, discharge or detonation of an explosive device, incendiary device or lethal device by the organized military forces of a State.

2. Nothing in this Convention shall be interpreted as detracting from other obligations imposed upon States by international law, including international humanitarian law.

13. Proposals submitted by the Republic of Korea (A/AC.252/1997/WP.13)

Amendments to articles 1 to 8 and 10

Article 1

1. Para. 4: delete "Organized".

2. Para. 6: add "underground" after "ground".

Article 2

1. Para. 1: insert "acquires, possesses," before "delivers,".

2. Para. 3: replace the paragraph with the following:

"3. Subject to the constitutional principles and the basic concepts of the legal systems of States Parties, a person also commits an offence if that person engages in conduct which constitutes a conspiracy or complicity to commit an offence as set forth in paragraph 1."

Article 3

Para. 1: insert "in connection with official duty" after "or lethal device".

Article 4

1. Para. 1: replace "adopt such measures as may be necessary" with "enact the necessary legislation".

2. Para. 2: replace "appropriate" by "effective".

Article 5

1. Para. 2 (c): delete "a civilian population of".

2. Introduce a new paragraph 2 bis as follows:

"2 bis. Any State Party which has established or subsequently rescinds jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of

the United Nations, who shall circulate the information to the other States Parties."

Article 6

1. Merge paragraphs 1 and 2 as follows:

"1. Upon being satisfied that the urgent circumstances so warrant to make a preliminary inquiry, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its laws, take that person into custody or take other measures to ensure that person's presence for such reasonable time as is necessary to enable any criminal or extradition proceedings to be instituted."

2. Para. 6: change "report" to "transmit".

Article 7

Redraft paragraph 2 as follows and move it to article 8:

"A conditional extradition or surrender by a State Party of one of its nationals which would be permitted under its law only through the optional agreement with the State seeking the extradition of the person that that person will be returned to that State to serve any sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, shall be deemed to constitute an extradition for the purpose of this Convention."

Article 8

1. Introduce a new paragraph 3 bis as follows:

"3 bis. The offences as set forth in article 2 shall not be considered as political crimes for the purpose of extradition. The States Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force."

2. Insert a new paragraph 6, reading:

"6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether the right of that person as set forth in article 6, paragraph 3, and article 7, paragraph 3, can be effected in the requesting State."

Article 10

1. Introduce a new paragraph 2 (a) bis as follows:

"(a) bis The State to which the person is transferred shall accord that person treatment in conformity with its law and international law, including international standards of human rights, while that person remains in its territory."

2. Para. 2 (b): replace "as soon as circumstances permit" by "as soon as the purpose of the transfer has been fulfilled".

14. Proposal submitted by Greece (A/AC.252/1997/WP.14)

Article 1, paragraph 1

1. "State facility" includes any permanent or temporary facility or conveyance [, wherever located,] that is used or occupied by members of Government, the legislature or the judiciary or by civilian or military officials or employees of a State or any other public authority or by employees or officials of an intergovernmental organization.

15. Proposal submitted by the Holy See (A/AC.252/1997/WP.15)

Article 6, paragraphs 1 and 6

Paragraph 1

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its laws, take measures to ensure that person's presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

Paragraph 6

6. When a State Party, pursuant to this article, may have taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 5, paragraph 1, and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

16. Proposals submitted by Pakistan (A/AC.252/1997/WP.16)

1. Second preambular paragraph

After the word "forms" add "and manifestations"

2. Add a new paragraph as the third preambular paragraph, reading:

"Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,"

3. In the existing third preambular paragraph:

(a) After the word "Recalling", insert "General Assembly resolution 46/51 of 9 December 1991 on measures to eliminate international terrorism, which had urged all States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism";

(b) After "December 1994", the remainder of the text may be deleted. An appropriate reference to resolution 51/210 may be considered.

4. *Add a new* paragraph as the fourth preambular paragraph, reading:

"Recognizing, in particular, that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,"

5. Add a new paragraph as the fifth preambular paragraph, reading:

"Recalling General Assembly resolution 40/61 of 9 December 1985, which, inter alia, 'urges all States unilaterally and in cooperation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security',"

6. Add a new paragraph as the sixth preambular paragraph, reading:

"Recalling further that resolution 40/61 'unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security',"

(Source: Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation)

7. Add a new paragraph as the ninth preambular paragraph, reading:

"Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,"

(Source: International Convention against the Taking of Hostages)

8. Article 1, paragraph 1

At the end of the revised text in A/AC.252/1997/WP.10, add "within its internationally recognized borders".

9. Article 2

(a) Add a new paragraph 4, reading:

"4. Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations."

(Source: International Convention against the Taking of Hostages)

(b) Add a new paragraph 5, reading:

"5. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States."

(c) Add a new paragraph 6, reading:

"6. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law."

(Source: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances)

10. Article 3

Add a new paragraph 1 bis, reading:

"1 bis. This Convention shall also not apply in the course of armed conflicts, as defined in the Geneva Conventions of 1949 and article 1, paragraph 4, of Additional Protocol I of 1977 thereto, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations."

(Source: International Convention against the Taking of Hostages)

11. Article 8

Add a new paragraph 6, reading:

"6. The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those treaties."

(Source: International Convention against the Taking of Hostages)

17. Proposal submitted by the United States of America (A/AC.252/1997/WP.17)

Article 2, (new) paragraph 4

4. Any person also commits an offence if that person agrees with another person to commit an offence as set forth in paragraph 1, and one of those persons takes a concrete action in furtherance of the agreement that manifests the intent of those persons that such crime be committed.

18. Proposal submitted by Italy (A/AC.252/1997/WP.18)

Article 3, (new) paragraph 3

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2;

(b) Organizes, directs or in any other way participates in the planning or preparation of the commission by a group of persons acting with a common purpose of one or more offences as set forth in paragraph 1 or 2.

19. Proposal submitted by the Holy See (A/AC.252/1997/WP.19)

Article 1, paragraph 1

1. "Government facility" includes any permanent or temporary facility or conveyance, wherever legitimately located, that is used or occupied by civilian or military persons of a State, or of a public authority, or of an intergovernmental organization in connection with official or governmental duties.

20. Amendments to documents A/AC.252/1997/WP.10, A/AC.252/1997/WP.12, A/AC.252/1997/CRP.1 and A/AC.252/1997/CRP.2, submitted by Colombia (A/AC.252/1997/WP.20)*

Article 1

Para. 1: Delete "wherever located".

Para. 4: For "Organized military forces of a State" read "Regular armed forces of a State".

Article 3

Para. 1: For "organized military forces of a State" read "regular armed forces of a State".

Article 5

Para. 2: The first two lines of the paragraph should read:

"A State Party may also, without prejudice to the provisions of paragraph 1 of this article, establish its jurisdiction over any such offence."

Para. 2 (a) bis: Delete the subparagraph.

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* The text of documents A/AC.252/1997/WP.10 and 12 is contained in sections 10 and 12 of the present annex. The relevant texts from documents A/AC.252/1997/CRP.1 and 2 is contained in annex I.B above.

Para. 2 (d): Delete the subparagraph.

Para. 4: Insert the following at the end of the paragraph: "in accordance with international law."

Para. 5: Delete the paragraph.

Article 7

Para. 2: Delete the paragraph.

Article 8

Para. 4: Delete the paragraph.

Para. 5: Delete the paragraph.

Para. 6: Replace this paragraph with the text of article 9, paragraph 1, of the International Convention against the Taking of Hostages.

Article 10

Delete the article.

Article 10 bis

Not applicable to English.

Article 11

Subpara. (a): Replace with the text of article 4, subparagraph (a), of the International Convention against the Taking of Hostages.

* * *

Note: The delegation of Colombia reserves the right to make further proposals on these and other texts that may be submitted in future.

21. Proposal submitted by France (A/AC.252/1997/WP.21)

Article 8, paragraph 7, of document A/AC.252/1997/CRP.1*

First option

Delete paragraph 7.

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* The relevant text from document A/AC.252/1997/CRP.1 is contained in annex I.B above.

Second option

Add the following three provisions:

1. A new paragraph following paragraph 7 (paragraph 6 having been deleted), which reads as follows:

"Any requested State may refuse to accede to a request for extradition submitted under this Convention if it has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinions, or that that person's position may be prejudiced for any of these reasons."

2. A new article, which reads as follows:

"Any State may, at the time of signature or deposit of its instrument of ratification, acceptance or approval, declare that it reserves the right to refuse extradition with respect to any offence set forth in article 2 which it considers to be a political offence, related to a political offence or inspired by political motives."

3. A new article, which reads as follows:

"Nothing in this Convention shall be interpreted as impairing the right of asylum as recognized by the respective constitutions of States Parties, by the provisions of the Geneva Convention of 28 July 1951 relating to the Status of Refugees as supplemented by the Protocol relating to the Status of Refugees of 31 January 1967, and by customary law."

22. Proposal submitted by the former Yugoslav Republic of Macedonia (A/AC.252/1997/WP.22)

Preamble, first paragraph

Insert "good-neighbourliness and" before "friendly relations and cooperation among States".

23. Proposal submitted by the Russian Federation (A/AC.252/1997/WP.23)

Article 1, paragraph 1

1. "Government (public) facility" includes any permanent or temporary facility or conveyance, wherever located, that is used or occupied by bodies of a State authority, including the legislature, the executive and the judiciary, or by civilian or military officials or employees of a State or any other public authority or by officials or employees of an intergovernmental organization in connection with their official duties.

24. Proposal submitted by Guatemala (A/AC.252/1997/WP.24)

Article 1, paragraph 1, of document A/AC.252/1997/CRP.3*

1. "Government or other public facility" includes any permanent or temporary facility or conveyance that is used or occupied, in connection with their official or related duties, by employees or members of Government, the legislature or the judiciary, by other civilian or military officials or employees, by representatives, employees or officials of a State or any other public authority, agency or entity or by employees or officials of an intergovernmental organization.

25. Proposal submitted by France and Ireland (A/AC.252/1997/WP.25)

Article 6, paragraphs 1 and 2

1. Upon receiving information that an offender or an alleged offender may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure his presence for the purpose of prosecution or extradition.

26. Proposal submitted by the United States of America (A/AC.252/1997/WP.26)

Proposed revision of article 6, paragraph 1, of Bureau text of 28 February 1997 (A/AC.252/1997/CRP.1);** and article 6 (1) bis thereof

1. When it appears that an offender or alleged offender is present within the territory of a State Party, that State shall immediately make such investigation, in accordance with its laws, as may be necessary for that State to initiate measures to fulfil the provisions of this Convention.

1 bis. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its internal law so as to ensure the person's presence for the purpose of prosecution or extradition.

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* The relevant text from document A/AC.252/1997/CRP.1 is contained in annex I.B above.

** The relevant text from document A/AC.252/1997/CRP.1 may be found in annex I.B above.

27. Proposal submitted by the Netherlands (A/AC.252/1997/WP.27)

Article 1, paragraph 3, and article 2, paragraph 1

Article 1, paragraph 3

Delete the paragraph.

Article 2, paragraph 1

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive device, incendiary device, toxic device, biological device or radioactive device in, into or affecting a place of public use, a government or other public facility, a public transportation system or an infrastructure facility.

28. Proposal submitted by Algeria (A/AC.252/1997/WP.28)

Title of the draft convention

International Convention for the Prevention and Suppression of Terrorist Bombings

29. Proposal submitted by Canada and China (A/AC.252/1997/WP.29)

Article 7, paragraph 2

2. Where its national laws permit, a State Party may fulfil the obligations in paragraph 1 by extraditing an alleged offender to another State Party for prosecution, upon the condition that he will be returned to the sending State Party immediately upon conclusion of the prosecution, for the purpose of serving any sentence imposed upon him as a result of such prosecution.

30. Proposal submitted by Switzerland (A/AC.252/1997/WP.30)

Article 3

This Convention shall not apply when the armed forces of the State deliver, place or explode or detonate a device mentioned in article 2 in an armed conflict in conformity with international humanitarian law.

31. Proposal submitted by Mexico (A/AC.252/1997/WP.31)

Proposed amendment to document A/AC.252/1997/CRP.1*

Article 8

1. Para. 6: delete the paragraph.

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* The relevant text from document A/AC.252/1997/CRP.1 is contained in annex I.B above.

2. Para. 7: insert the following:

"7. For the purposes of extradition between States Parties and subject to their respective constitutional norms, none of the offences set forth in article 2 shall be regarded as a political offence."

Article 8 bis

Insert a new article 8 bis as follows:

"8 bis. The request for extradition of an alleged offender pursuant to this Convention shall not be acceded to if the requested State has substantial grounds for believing:

(a) That the request for extradition for an offence set forth in article 2 has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion; or

(b) That person's position may be prejudiced:

(i) For any of the reasons mentioned in subparagraph (a) of this paragraph, or

(ii) For the reason that communication with that person by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected."

32. Proposal submitted by the Netherlands and the United States of America (A/AC.252/1997/WP.32)

Article 1, paragraph 3; article 2 and elsewhere

Article 2

In article 2 and elsewhere in the Convention, replace the phrase "explosive device, incendiary device or lethal device" each time it appears with the phrase "explosive or other lethal device".

Article 1, paragraph 3

Delete the existing definition of "lethal device" and replace it with the following definition of the term "explosive or other lethal device":

"3. 'Explosive or other lethal device' means:

"(a) An explosive or incendiary device that is designed, or has the capability, to cause death or serious bodily injury; or

"(b) A weapon or device that is designed, or has the capability, to cause death or serious bodily injury[a] through the release, dissemination or impact of toxic chemicals, biological agents or toxins, or radiation or radioactive material."

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[a] If there is an offence reaching intentional destruction of property (e.g., as in A/AC.252/1997/CRP.3, art. 2, para. 1 (b)), then the terminology used to describe that offence could be reflected here. For example, if there is an offence in article 2 reaching conduct with "intent to cause extensive destruction of property", then the additional phrase "or extensive destruction of property" could be inserted after "death or serious bodily injury" both times it appears in this definition of "explosive or other lethal device".

ANNEX IV

Informal summary of the discussions in the plenary and in the Working Group, prepared by the Rapporteur

1. At the first meeting of the Ad Hoc Committee, on 24 February 1997, the representative of France, on behalf of the Group of Seven major industrialized countries and the Russian Federation, introduced a preliminary working document on a draft International Convention for the Suppression of Terrorist Bombings (A/AC.252/L.2) (see annex II). The document was based on the relevant provisions of General Assembly resolution 49/60 of 9 December 1994, in which the Assembly had encouraged States to review existing international texts to determine whether it was necessary to supplement the framework on terrorism. The issue of terrorist bombings had first been presented by the United States of America at the Ministerial Conference on Terrorism, held in Paris in July 1996 (see A/51/261), at which the Group of Seven major industrialized countries and the Russian Federation adopted 25 recommendations on the subject. The General Assembly, in its most recent resolution on terrorism, resolution 51/210 of 17 December 1996, had taken note of those recommendations. The Assembly had also established the present Ad Hoc Committee, with a mandate, inter alia, to elaborate an international convention on the suppression of terrorist bombings. Following the adoption of resolution 51/210, the group of experts had met in Paris and drafted and submitted to the General Assembly the preliminary working document to serve as a basis for the work of the Ad Hoc Committee. The representative of France further stated that the working document reflected the text and structure of other related conventions; it would, however, apply to situations not covered by other conventions on terrorism.

2. The representative of France went on to explain that the preamble to the draft convention reflected language of agreed-upon, recent United Nations legal instruments. Article 1, on definitions, was to be considered as a necessary adjunct to article 2, which covered the scope of the convention. Article 3 covered the organized military forces of a State; article 4 the obligation of States parties to adopt domestic legislation to implement the convention; article 5 established jurisdiction, both mandatory and discretionary; article 6 dealt with detention; article 7 provided for the obligation of extradition or prosecution; article 8 concerned the relationship of the convention to existing extradition treaties; article 9 concerned proceedings; article 10 referred to the transfer of persons to another State; article 11 provided for general cooperation between States; article 12 covered communication between States; article 13 dealt with the settlement of disputes; and articles 14 through 17 contained the final clauses.

3. He stressed that the preliminary working document was not meant necessarily to reflect the group's position, but rather to be a useful document for discussion on the topic. Every delegation, including the authors of the proposal, was entitled to make any proposal it wished on the draft convention.

4. Before the Committee reconvened into a working group of the whole to consider the preliminary working document, delegations were invited to make general comments. It was stated that the working document provided a good basis for discussion, especially since it took into account widely accepted legal instruments in the area of terrorism.

5. The need was stressed for further elaboration of articles 11 and 12. According to this view, there should be a procedure in place for State

cooperation in article 11, and article 12 should provide for a larger role for the Secretary-General than what was currently envisaged in the draft article. Several amendments to the draft were suggested, namely, the addition of a provision to the effect that States should refrain from organizing, instigating, facilitating, financing or assisting acts of terrorism; another provision on the inadmissibility of a defence based on the political character of the offence; and another provision to guard against abuse of the asylum regime by terrorists.

6. The view was expressed that, considering that measures to prevent terrorism contained an element of urgency, the sectoral approach to the problem of terrorism would allow for greater success in combating terrorism, including the suppression of terrorist bombings. Another delegation viewed the draft convention on the suppression of terrorist bombings as only one step in the struggle against international terrorism. What was actually needed was a wider global legal regime and a legal definition of terrorism.

7. The Working Group proceeded to an article-by-article consideration of document A/AC.252/L.2.

Preamble

8. A number of proposals were made with a view to supplementing the provisions of the proposed paragraphs of the preamble:

(a) With regard to the first preambular paragraph:

To insert "good-neighbourliness" before "friendly relations and cooperation among States";

(b) Second preambular paragraph:

(i) To add at the end of the paragraph the words "in all its forms and manifestations";

(ii) To add after the paragraph a new paragraph, reading:

"Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations (resolution 50/6 of 24 October 1995)";

(iii) To insert after the paragraph a new paragraph taken from the preamble to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, reading:

"Recognizing, in particular, that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights";

(c) Third preambular paragraph:

To recall, in addition to General Assembly resolution 49/60 of 9 December 1994, Assembly resolutions 46/51 of 9 December 1991 and 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, contained in the annex to resolution 51/210;

(d) Fourth preambular paragraph:

(i) To add after the paragraph another paragraph, taken from the preamble to the Maritime Safety Convention, reading:

> "Recalling General Assembly resolution 40/61 of 9 December 1985, in which the Assembly, inter alia, 'urges all States unilaterally and in cooperation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security'";

(ii) To insert after the paragraph a further new paragraph from the Maritime Safety Convention, reading:

> "Recalling General Assembly resolution 40/61 of 9 December 1985, in which the Assembly, inter alia, 'unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security'";

(e) Fifth preambular paragraph:

To define clearly the term "lethal devices"; or otherwise to delete it;

(f) Sixth preambular paragraph:

(i) To insert after the words "multilateral legal provisions" the words "at an international level";

(ii) To insert after the paragraph a paragraph from the International Convention against the Taking of Hostages, reading:

> "Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly";

(g) Seventh preambular paragraph:

To insert after the words "cooperation between States" the words "on the basis of full respect for State sovereignty, territorial integrity and non-interference in the internal affairs of a State";

(h) To combine the second and fourth preambular paragraphs and the third and fourth preambular paragraphs.

9. In connection with the proposed amendments, some delegations expressed the view that the preamble should be short and succinct and should reflect the content of the draft convention. In their view, a preamble should not include, for example, any reference to General Assembly resolutions adopted long ago.

10. Other delegations expressed the view that it was necessary to have a preamble that reflected a proper balance. It was therefore essential to include all General Assembly resolutions that were relevant to the subject matter.

Article 1

11. Regarding article 1 on definitions, there were suggestions to the effect that terms such as "bombs", "terrorism", "terrorist bombings" and "explosive or incendiary device" should also be defined so as to facilitate the interpretation and implementation of the draft convention. Other delegations, however, were of the view that to attempt to define every concept found in the text of the convention not only would be difficult but also would run the risk of omission.

12. The term "government facility" in paragraph 1 elicited much discussion. It was felt by some delegations that the term as currently defined was too narrow and should be expanded to include the notions of "State" and/or "public" facility as well; it should cover not only the executive branch of government but also the judicial and legislative branches. A written proposal (A/AC.252/1997/WP.2) was submitted together with some oral amendments thereto to address these concerns. As regards the phrase "wherever located" following "government facility", some delegations felt it was a useful clarification. The opinion was expressed that the phrase should be amended to include "wherever legitimately located". Another proposal was to add the phrase "within the internationally recognized borders of a State or within the internationally recognized borders of other States". Still others expressed the view that there was no need to include it. The suggestion was made to delete the word "military" since that term was covered by the reference to government officials and employees. In this regard, it was proposed that the term "military and civilian" should be omitted. Some delegations questioned the need to insert "officials" in addition to "employees" as proposed in the revised text (A/AC.252/1997/WP.10). One delegation suggested using the word "persons" (A/AC.252/1997/WP.19). It was also believed that the term would not cover intergovernmental organizations, which should be included in the definitions, preferably as a separate entry (A/AC.252/1997/WP.10 and 13). Attention was drawn to the need for any changes made in this connection to be correspondingly reflected in article 2.

13. Another concern involved the definition of "lethal device". Some delegations were of the view that the term required clarification, as it seemed to go beyond a definition or general understanding of "bomb", having regard to the elements contained in the paragraph. Other delegations suggested that the title of the draft convention should be changed to broaden its scope beyond terrorist bombings. It was also suggested that the word "substance" should be added to the definition. There was a further suggestion that paragraphs 3 (b) and (c) should use the relevant terminology contained in multilateral conventions relating to chemical and biological weapons and nuclear material conventions to avoid inconsistency and problems of interpretation.

14. Some delegations expressed their doubts about the concept of "organized armed forces". Some preferred having domestic law define its exact concept. Others felt that the word "organized" could be deleted.

15. Some delegations felt that it was necessary to expand the concept of organized armed forces to include the members of the security and police forces, which in many cases did not have functions related to national self-defence, but instead focused on the maintenance of law and order. In this respect, some delegations were of the view that internal security forces were already covered by the qualification applied to armed forces in the proposed text as having the "primary purpose" of national self-defence. Other delegations indicated that the acts of internal security forces were adequately covered by the use of the adjective "unlawfully" in article 2, paragraph 1. Furthermore, it was noted that unlike the activities of armed forces, those of internal security forces were not regulated by international law. However, another delegation expressed the view that further discussion was required on the matter.

16. A proposal was made to indicate to which military forces the definition in paragraph 4 applied, whether to the State on whose territory the offence was committed or to States that had jurisdiction over the offence.

17. Several delegations also noted the need for clarification regarding the concept of "persons authorized to accompany" armed forces, a possible solution being a reference to the respective provisions of the 1949 Geneva Conventions. The view was also expressed that it was preferable to delete any reference to such persons, since the term "organized armed forces" was generic. It was noted in this connection that the reference to those persons had been taken from the Geneva Conventions, but that an alternative formulation could be found since the draft was covering a lot of ground.

18. The delegation that had introduced a revised version of document A/AC.252/L.2 (A/AC.252/1997/WP.10 and 12) as a result of the first round of discussions noted that the changes introduced in article 1, paragraph 4, contained an enlarged definition of armed forces that included the security forces and restricted the concept of other persons accompanying them to those who acted in support of the armed forces and were under their command and control.

19. Some delegations considered that the revised articles did not adequately reflect the different views that had been expressed during the debate.

20. The view was expressed that the consequences of including security forces under the purview of the draft convention needed to be analysed. Doubts were expressed about the use of counter-insurgents, mercenaries and rogue elements as persons acting in support of armed forces. Some delegations felt that a reference to the domestic laws regulating the security forces was still required. One delegation remarked that the word "organized" could be deleted, while another thought that non-military forces could also be covered by the provision. Some delegations expressed their preference for the deletion of paragraph 4 altogether.

21. In the revised text of paragraph 5, a shorter definition was proposed for the term "place of general public use", which omitted the second half of the original definition. While some delegations preferred this short version, other delegations found the list contained in the original proposal helpful. The view was also expressed that the draft convention should also cover private areas.

22. It was questioned whether underground subway systems were covered under the term "public transportation", and whether a term such as "watercourse" or "waterways" should replace or complement "sea" in order to broaden the concept

to include lakes and rivers. Written proposals (A/AC.252/1997/WP.10 and 13) and oral amendments were submitted with respect to the above concerns.

Article 2

23. Regarding article 2, on the scope of the draft convention, suggestions were made to broaden paragraph 1 to include, for example, participation, manufacture, import or export, acquisition, possession, delivery and operation in relation to a bomb. Concern was expressed, however, that the draft convention should not purport to regulate the manufacture of explosives. The opinion was also put forward that the contents of paragraph 1 would be better presented in two separate paragraphs. A written proposal (A/AC.252/1997/WP.13) and some oral amendments were submitted in respect of paragraph 1.

24. The phrase "unlawfully and intentionally" was also the subject of debate. While some delegations felt that the phrase was not needed, others were of the view that it was necessary in order to distinguish between those acts which were intended to be covered, on the one hand, and lawful actions and accidents on the other. It was pointed out that this terminology was also found in other established international legal instruments. The suggestion was made that the terms should be defined. Some delegations proposed to replace "unlawfully and intentionally" with "for a terrorist purpose" in order to distinguish terrorist acts from ordinary crime in domestic laws. A proposal was also made to add, after "unlawfully", the words "in violation of national and international law".

25. There were also suggestions to broaden paragraph 1 (a) to include property damage, psychological effects, panic among the population or serious disturbances of public order or social and economic life. It was suggested that if property damage was included it should be qualified to reflect a degree of gravity appropriate to this type of convention. It was noted in this connection that the 1949 Geneva Conventions referred to "extensive damage". It was further noted that "psychological effects" was a fairly subjective term and could not rise to the level of gravity contemplated under the draft convention. It was suggested that in subparagraph (b) the phrase "the person knew or should have known" should be modified to reflect a more objective standard. Written proposals (A/AC.252/1997/WP.1, 9 and 12) and oral amendments were submitted in this regard.

26. As regards paragraph 2, some delegations expressed the view that, along with attempt, threats to commit an offence under the draft convention should also be covered. In this connection, the point was made that other similar conventions included the offence of threats (e.g., the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, and the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation). While under one view it was felt that the term "attempt" should be defined, another view held that it should be deleted, since it did not attain the level of gravity required under the proposed draft.

27. As regards paragraph 3 and terms such as "association", "conspiracy", etc., contained therein, it was pointed out that such terms were subject to different interpretations under the various legal systems and if they were to be retained they must be clearly defined in order to avoid confusion and satisfy the principle of legality. Some proposals addressed these concerns (A/AC.252/1997/WP.1, 12, 13, 17 and 18).

28. The delegation of France presented, on behalf of the authors of the working document, a revised version of article 2 (see A/AC.252/1997/WP.12) and, as

regards the chapeau, noted that it remained unchanged except for the addition of the word "device" after the words "explosive", "incendiary" and "lethal". Paragraph 1 (b) included wording taken from the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons and referred to extensive property damage likely to endanger persons, even though the act itself might not be aimed at causing death. Paragraph 1 (c) had been made more general. The wording in paragraph 3 had been also changed to general terms, thus making any reference to domestic legislation unnecessary.

29. The view was expressed that greater clarity was required on the scope of application of the Convention, on who was covered and excluded from its provisions, as well as on what its objective was; to this end it was suggested that articles 2 and 3 should be joined under an appropriate heading.

30. Some delegations preferred the deletion of "unlawfully and intentionally" from the chapeau. As regards "unlawfully", it was up to domestic law to establish the illegality of an act. As regards the element of intent, it was redundant in the light of paragraphs 1 (a) and (b). Some delegations suggested an amendment that would refer to the terrorist purposes behind the commission of the act. Others pointed out the difficulties that finding an acceptable definition of terrorism would entail.

31. Some delegations, however, considered that it was important to retain the revised wording of the chapeau because it contained the general mental element of intent indispensable for the commission of an offence, while the other references were of a specific nature. In the view of these delegations, retention of the unlawfulness of the act was also required, since in many instances the acts could be committed for perfectly legitimate purposes, such as the demolition of buildings, controlled explosions or the rescue of hostages.

32. Some delegations considered that the chapeau of the article could be broadened to include other dangerous substances or devices, while one delegation expressed its opposition to such an amendment and requested that clearer language be used to explain the meaning of "lethal device". Another delegation preferred use of the words "or similar device". A suggestion was made to delete the term "lethal device". A further suggestion was made to expand the concept of "place of general public use" to cover economic activities.

33. The suggestion was made to delete subparagraph 1 (b) in article 2. Some delegations suggested deleting the qualification that the extensive destruction of property in paragraph 1 (b) result in endangering persons. It was pointed out that paragraph 1 (c) already covered that possibility.

34. Some delegations felt there was a need to broaden the provision by referring, for example, to the disruption of economic and social infrastructure.

35. Divergent views were expressed on refining the provision to cover both public and private property. One delegation cautioned that any reference to private property might broaden the scope of the draft convention and internationalize many crimes that otherwise would be governed by national law.

36. Concern was voiced at the fact that the revised proposal had omitted any reference to threats to carry out the offences set forth in article 2.

37. The view was expressed that membership in a criminal association should also be included in paragraph 3 of article 2. Some delegations voiced concern regarding this suggestion, which, in their view, would result in a vague link

between the offender and the offence. It was also noted that the wording of the revised proposal did not seem to cover individuals who had ordered or agreed to carry out an offence. Other delegations considered the inclusion of the concept of conspiracy to be preferable. Two proposals were submitted to bridge the divergent views on the matter (A/AC.252/1997/WP.17 and 18).

Article 3

38. As regards article 3, and more specifically paragraph 1 thereof, the view was expressed that the paragraph should be deleted, since the convention was intended to cover terrorist bombings, which would obviously exclude acts by military forces.

39. Some delegations expressed their preference for defining the term "terrorist bombings", since that would facilitate the work and make article 3, paragraph 1, unnecessary. Opposition to that suggestion was voiced by some delegations, which considered that such an endeavour would be either unnecessary or superfluous, for no agreement could be reached on the matter.

40. When introducing article 3 in the Committee, one of the sponsors explained that the draft convention should not apply to the activities of the organized armed forces of a State. The convention would be an anti-terrorism instrument that would enhance international law-enforcement cooperation efforts, and should not purport to regulate the conduct of armed forces, which was already addressed, inter alia, in other bodies of law such as international humanitarian law and the law of State responsibility. In this connection, the sponsor noted that draft paragraph 2 of article 3 made clear that the convention was not to be interpreted as detracting from those other obligations imposed upon States.

41. One of the sponsors pointed out that paragraphs 1 and 2 of article 3 had to be read in conjunction with each other; because it was not the intention of the document to imply that organized armed forces were not constrained by laws, such as the laws of war or State responsibility.

42. Several delegations highlighted the importance of including clear definitions to avoid leaving any gaps in the text. The view was expressed that paragraph 1 could be formulated in more general terms so as to include civilian forces.

43. One of the sponsors stressed that the paragraph was also intended to apply to United Nations peacekeeping operations, since the provision was not limited to situations of armed conflict.

44. The view was expressed that due safeguards were needed to ensure that a massive abuse of force on the part of a State was not exempted from the scope of the convention, for example, in cases where armed forces perceived their conduct to be in the interest of national defence or in cases of military occupation or occupation of areas under dispute. Some delegations felt that the acts of military forces should be excluded from the scope of the convention only when they took place in performance of their official functions, consistent with or in accordance with international law.

45. It was suggested that the exemption of the use of bombs by armed forces from the scope of the convention should be limited to legitimate acts of combatants during armed conflict. There was opposition to such a proposal on the grounds that the draft convention should avoid making any judgement about the laws of armed conflict.

46. The view was expressed that article 3, paragraph 1, should be limited to acts that took place within the territorial State of the armed forces, or where their presence was legitimate or lawful. In this connection it was also noted that the paragraph was intended to apply to the acts of military forces conducted outside their own territory.

47. Several delegations felt that paragraph 2 should also refer to obligations under international law; others suggested the inclusion of a reference to international instruments such as the 1949 Geneva Conventions, the Additional Protocols thereto and the Charter of the United Nations. Some delegations remarked that both national and international law could fall within the purview of paragraph 2.

48. Some delegations suggested replacing the phrase "as detracting from other obligations imposed upon States by" with the words "as excluding the implementation of relevant provisions of".

49. Some delegations expressed their preference for placing the contents of article 3 between articles 1 and 2, since it indicated the scope of the draft convention. Opinions were also expressed to the effect that it should be placed at the end of the convention. Some delegations were of the view that the contents of article 3 could be split into two articles, since the two existing paragraphs lacked a common denominator.

50. Comments were expressed on the last part of article 3, paragraph 2, namely the words "as detracting from other obligations imposed upon States by international humanitarian law". Some delegations suggested that it should be modified to focus on "implementation", "rights and obligations" and "applicability of norms" of international law.

51. The delegation of France, speaking on behalf of the authors of the working document, presented a revised version of the article (A/AC.252/1997/WP.12) and noted that paragraph 1 had a minor change, consisting of the addition of the word "device" after the words "explosive", "incendiary" and "lethal", and the inclusion of a reference to international law in paragraph 2.

52. Some delegations expressed their preference for the deletion of the paragraph. Other delegations were of the view that the exemptions foreseen under paragraph 1 should be qualified. They could include acts carried out by military forces in the discharge of their functions, in a declared state of war, within their own territorial State or within a time-frame limited to the period when the terrorist act was taking place.

53. It was suggested that a new paragraph should be added after paragraph 1 excluding from the scope of the convention cases of armed conflict as defined in the 1949 Geneva Conventions and Additional Protocol I of 1997 (A/AC.252/1997/WP.16). However, it was noted that not all States were parties to those instruments.

54. Some delegations considered that the revised text of paragraph 2 could be improved by indicating a reference to "rights" along with the "obligations". The preference to have the paragraph as a separate article was also raised by some delegations. The suggestion was also made to expand the paragraph's contents to include a reference to the 1949 Geneva Conventions.

55. In connection with paragraph 1, the authors of the working document indicated that, although they had not reached an agreement on including a

reference to the manufacture, possession, transfer or acquisition of devices such as those meant to be covered by the draft convention, another text had been proposed and could be considered as a separate paragraph (A/AC.252/1997/CRP.3). It was stressed that the mere manufacture or possession of the device did not, constitute an offence per se, unless it was accompanied by an act that would constitute an attempt to commit an offence.

56. Some delegations expressed support for the new provision, which would, inter alia, facilitate evidence-gathering. The point was made that the proposal might even be broadened. Divergent views were expressed regarding the eventual placement of such a provision. Other delegations considered that further reflection on the proposal was required, particularly to analyse if the proposal's content was not already covered by paragraphs 2 and 3 of article 2 and if the element of intent found in other provisions had been omitted. Concern was also voiced as regards the widening of the scope of the draft convention, which could result from the acceptance of the proposal.

Article 4

57. In connection with article 4 and in particular its chapeau and subparagraph (a), it was suggested that the wording be amended in order to emphasize the need for States parties to enact the necessary legislation to criminalize the offences under article 2. A written proposal was submitted to that effect (A/AC.252/1997/WP.13). Some delegations, however, preferred the current wording which reflected the existing standard in other international legal instruments. The view was also expressed that legislation might not be necessary since international legal instruments under some legal systems were self-executing.

58. With regard to subparagraph (b), some delegations suggested that "appropriate penalties" should be replaced by "effective" or "severe" penalties, to emphasize that grave crimes required such punishment and also to establish a standard for the States parties. A proposal was submitted in that regard (ibid.). Other delegations, however, were of the view that there was no need to change the wording because the word "appropriate" covered the concept that penalties were bound to be severe or effective, considering the nature of the crimes contemplated under the draft convention. There was also a suggestion to replace the words "take into account the grave nature of those offences" with "in accordance with domestic law". The suggestion was made to add the words "within the scope of this Convention" at the end of the paragraph so as to make the provision more precise.

59. It was also suggested that the end of the paragraph should make clear that "such penalties would make extradition possible under the laws of that State Party". Some delegations opposed this addition.

Article 5

60. Regarding article 5, some delegations expressed the view that the distinction between mandatory jurisdiction as contained in paragraph 1 and discretionary jurisdiction found in paragraph 2 should be clarified by, inter alia, making it clear that in case of coexistence of circumstances contemplated in paragraphs 1 and 2, the discretionary jurisdiction under paragraph 2 was without prejudice to the mandatory jurisdiction under paragraph 1. Other delegations, however, were of the opinion that such a clarification was not necessary and might even raise questions as to whether

some of the grounds of jurisdiction listed in the provision competed with each other, which was not the intention of the document.

61. Some delegations considered that paragraph 1 needed further refinement. There was a suggestion to add "lawful" before "measures", or to add a condition, namely, "upon having relevant facts being reasonably established", at the beginning of the paragraph, as well as at the beginning of paragraph 2 (A/AC.252/1997/WP.4). Some delegations opposed such additions.

62. Regarding paragraph 1 (a), some delegations were of the opinion that the term "territory" required explanation; the expression "within the territorial jurisdiction of a State" was suggested. With respect to paragraph 1 (b), it was suggested that it should also cover the premises of the diplomatic mission of a State.

63. Regarding paragraph 1 (c), there was a suggestion to add at the end "without prejudice to the provisions applicable in that State with regard to penal procedure and rules on establishment of jurisdiction". Suggestions were made to insert either paragraph 2 (a) or 2 (b) after paragraph 1 (c). Other delegations questioned the advisability of those suggestions.

64. With respect to paragraph 2 (b), there was a suggestion that the offences committed by a stateless person should be limited to those committed abroad. Other delegations took issue with this suggestion.

65. Regarding paragraph 2 (c), the point was made by some delegations that the first half of the provision was an innovation and had been included to cover those situations where terrorist actions which took place in one State were intended to have a negative effect in another State. Some delegations expressed the view that the entire provision should be deleted, while others wished to delete only the first part. Still others expressed the opinion that since the provision expressed two separate ideas, it could be split into two paragraphs. A proposal was submitted to delete the words "a civilian population of" (A/AC.252/1997/WP.13).

66. The point was made that the wording of paragraph 4 had been taken from the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and was intended to allow States the right to establish jurisdiction over similar offences which had not been so described in the draft convention. Some delegations suggested that the article should make clear that States could establish jurisdiction so long as they did not infringe on the sovereign rights of other States. Others did not consider this necessary.

67. The suggestion was made to include a mechanism for notifying the Secretary-General of the United Nations when a State established discretionary jurisdiction, as had been done in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (ibid.). There was also a written proposal to add a new paragraph 5 conferring jurisdiction over the offences contemplated in the draft to an international criminal tribunal, under certain conditions (A/AC.252/1997/WP.3).

Article 6

68. A view was expressed that the article should be deleted because it was difficult to envisage what could motivate a State to take a person into custody without some sort of judicial proceeding, particularly when inter-State assistance could be quickly requested. This would be the reason for the

existence of very few practical cases occurring under similar provisions of other international conventions against terrorism. Furthermore, it was felt that the article lacked any juridical basis. Another delegation felt that the deletion of article 3 was called for because it seemed to imply that domestic laws would be subordinated to it.

69. Some other delegations, however, considered article 6 an important and useful article which should be retained. Various suggestions were made to improve it.

70. Some concerns were voiced regarding the opening phrase "Upon being satisfied that the circumstances so warrant" in paragraph 1, as it could be open to different interpretations. Suggestions were then made to stress the urgency of the circumstances or the need for a preliminary inquiry.

71. There was also concern for the mandatory nature of paragraph 1 requiring States to take persons into custody or take other measures. A suggestion was made to make it discretionary. The authors of the text explained that the wording did indeed reflect a certain degree of obligation for a State to at least seriously consider taking those measures. A suggestion was made to omit any specific reference to "custody" and refer simply to "take measures".

72. It was suggested that the term "offender" should be substituted by "the convicted person" to cover all circumstances.

73. Some delegations expressed concerns regarding the length of the detention called for by paragraph 1. In this connection it was suggested to add a reference to national laws and international human rights standards. There were also suggestions to limit detention to the minimum period of time necessary to institute custody or extradition proceedings. Some delegations considered this unnecessary. The need to preclude the possibility of detention without a criminal or extradition proceeding was stressed. Some delegations were of the view that the article should begin with its second paragraph. Others thought paragraph 2 should be part of paragraph 1 in fine.

74. Some delegations pointed to the need to refine the provisions regarding the rights of the detained. It was suggested that the person being detained should be informed of his/her rights referred to in paragraph 3 (a) and (b). Some delegations felt that human rights standards were pre-existing and problems might arise if an attempt was made to apply them directly and not through domestic law, as was required by some States. The point was also made that reference to international human rights conventions was ambiguous and that not all States were parties to those instruments.

75. Some delegations were of the view that paragraph 3 of article 7 was also relevant here and could be kept as a separate article, applicable to both articles 6 and 7.

76. With regard to paragraph 4, a view was expressed that the second part of the paragraph, "subject to ...", might constitute an unnecessary condition to the laws and rights of the detaining State. Furthermore, one delegation felt that specific conditions in a State might require the absence of any restraint such as the one implied by the second part of the paragraph. The authors of the proposal indicated that the paragraph recognized certain prison confinement conditions established by national law, provided they did not violate the rights referred to in paragraph 3. Another sponsor noted that caution was called for

in resorting to domestic law because a certain degree of uniformity was required among all States.

77. Some delegations pointed to the need for a mechanism which could facilitate the implementation of paragraph 6. It was suggested that the Secretary-General might be given the role of acting as a conduit for the necessary notifications.

Article 7

78. It was noted by some delegations that the article was a core provision of the draft convention. Paragraph 1 set forth the core principle and obligation to extradite or prosecute, under article 5, paragraph 3, the offender or alleged offender found in its territory. Reference was made to international conventions which contained this principle (see A/AC.252/1997/L.2, footnote 12). The provision of paragraph 2 was characterized as new insofar as it had not been included in other international conventions on the subject. It set forth the principle that, within the obligation to extradite or prosecute, where a State was constrained against extradition of its nationals, that State could do so on condition that its national would be returned to serve the sentence in his/her country. The provision was optional and was a variation of the principle of "extradite or prosecute" and was not intended to substitute for the general obligation to extradite or prosecute. In the view of the sponsors, the provision would make it possible for States whose national laws prohibited extradition of their nationals to comply with the provisions under the draft convention. Regarding paragraph 3, the sponsors noted that it set out the obligation to accord fair treatment, at all stages, to all persons against whom proceedings were being carried out.

79. Some delegations, while generally supporting the article, proposed that there should also be included the obligation of cooperation, which would entail the submission of the necessary evidence in order to facilitate the extradition of the offender or alleged offender.

80. The view was expressed by some delegations that domestic laws in their respective countries prohibited the extradition of persons to any State with which no extradition treaty existed. Where it did exist, extradition was also limited to cases mentioned in the relevant treaty. Moreover, extradition was also not permitted if the offender or alleged offender was in the process of going through a trial.

81. With reference to paragraph 2, some delegations welcomed its inclusion, expressing the view that the provisions would serve a useful purpose given the fact that constitutional requirements in a number of countries only allowed the extradition of nationals on condition that, if convicted, those individuals would be returned to serve sentence in their respective countries.

82. Other delegations stated that the provisions of paragraph 2 were problematic and, if included, would be difficult to implement in practice. In their view, since their national laws prohibited the extradition of nationals, it would not be possible to extradite those persons to another State under any condition. They therefore proposed the deletion of the paragraph. There was a suggestion to make clear that the conditional extradition or surrender would take place only when a State party was permitted to do so under its laws (A/AC.252/1997/WP.6). In some delegations' view, without this paragraph, a State party could still do so if its national law permitted.

83. Regarding paragraph 3, some delegations suggested the inclusion of the words "in accordance with international standards" after the words "fair treatment". Others suggested using the words "in accordance with international law" (see A/AC.252/1997/WP.7). Other delegations expressed their doubts about the inclusion, in particular, the exact definition or meaning of the term "international standards". In their view, the inclusion might cause endless arguments.

Article 8

84. It was stated on behalf of the authors of the document that many of the provisions in the article were also to be found in some of the existing international instruments (see A/AC.252/L.2, footnote 17). With regard to paragraph 1, it was stated that the provision set forth the rule that the offences enumerated in article 2 of the draft convention were to be included as extraditable offences in any existing or future extradition treaties between the parties. Regarding paragraph 2, it was stated that where extradition was made conditional upon the existence of an extradition treaty, the requested State party might consider the draft convention as a legal basis for extradition. Concerning paragraph 3, it was observed that the provision set forth the rule which allowed States parties to recognize the offences set forth in article 2 as extraditable offences between them. With regard to paragraph 4, it was stated that the offences set forth in article 2 were to be treated as if they had been committed not only in the territories of the States in which the offences occurred, but also in the territories of the States required to establish their jurisdiction. Finally, regarding paragraph 5, it was stated that the provision set forth a rule that would modify all extradition treaties and arrangements in accordance with the draft convention.

85. Some delegations stated that article 8 as currently drafted was more restrictive than similar provisions found in other conventions, citing the examples of article 10 of the International Convention against the Taking of Hostages and article 11 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. In particular, some found paragraph 5 of the article to be particularly restrictive in that it only referred to extradition treaties that were incompatible with the draft convention and suggested its redrafting to make it less restrictive.

86. It was also pointed out by some delegations that since not all States might accept the provisions of article 8, paragraph 2, the draft convention might not apply in cases where only one State accepted them. It was noted that, as currently drafted, the provisions could be interpreted to mean that the requested State was obliged to accept the jurisdiction of the requesting State. Such an interpretation, it was said, would not be acceptable to those delegations. Some delegations expressed the view that paragraph 5 should be deleted or should be amended so as to be given an optional character.

87. Other delegations pointed out that paragraph 2 was optional as regards the consideration of the draft convention by the requested State as a legal basis for extradition in the absence of an extradition treaty between the two parties, and was therefore acceptable to those delegations. It was also pointed out that article 8, paragraph 4, placed the jurisdiction that would be exercised under article 5, paragraph 1, which was compulsory, on an equal footing with the jurisdiction that would be exercised under article 5, paragraph 2, which was optional and subsidiary. Some delegations expressed reservations concerning the compatibility of article 8, paragraph 5, with the Vienna Convention on the Law of Treaties and the practical difficulties which that provision might entail.

88. Some delegations proposed that, in view of the gravity of the offence of terrorist bombings, the article should contain a provision to the effect that those offences should not be considered as political offences or as politically motivated and that political motivation should not be used as a defence. A provision of a similar nature, it was observed, was found in other conventions, for example, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Genocide Convention and the European Convention on the Suppression of Terrorism.

89. Some delegations proposed that the article should contain a provision to the effect that the draft convention did not impose an obligation to extradite if the requested State had substantial grounds for believing that the request for extradition was for the purpose of prosecuting or punishing a person on account of that persons's race, religion, nationality or political opinions, or that the person's position might be prejudiced for any of those reasons (A/AC.252/1997/WP.5).

90. A proposal was made to include in the article a provision to the effect that, in considering a request for the extradition of an alleged offender, the requested State should pay due regard to whether that person's rights as set forth in article 6, paragraph 3, and article 7, paragraph 3, could be effected in the requesting State (A/AC.252/1997/WP.13).

91. Another proposal was put forward to include in article 8 a provision that the provisions of the Convention would not affect the application of treaties on asylum which were in force as between the parties to those treaties, and that a State party to the draft convention might not invoke those treaties with respect to another State party which was not also a party to those treaties (see A/AC.252/1997/WP.16).

Article 9

92. It was suggested that paragraph 1 of the article should mention expressly other types of possible assistance, in addition to assistance in obtaining evidence. Some delegations, however, stressed that the draft was not a legal assistance treaty and therefore there was no need to include a long list of types of assistance which States could provide for each other.

93. The view was expressed that a request for assistance should not be treated as an obligation if the request was politically motivated or when a State could be exploited in some way by the requesting State. One delegation stated, however, that this condition should only be pertinent when there was no mutual assistance treaty between the two States. Others felt that the article should not be amended in such a manner as that could represent a significant departure from established mutual assistance procedures contained in other conventions.

Article 10

94. The point was made that the provision covered a different situation than that of extradition and it was therefore necessary, because many States lacked authority - unless expressly provided for - to transfer individuals for purposes such as providing testimony. Some delegations, however, felt that the provision should be either deleted or clarified so as to emphasize that it was not a short cut to avoid an extradition procedure. It was also suggested that the article should spell out clearly and precisely the rights and obligations of States parties. Some other delegations questioned the need to single out in one article this particular type of cooperation between States parties.

95. It was also suggested that the consent of the person being transferred, in paragraph 1 (a), should be made more explicit in the provision. Some delegations were of the view that the phrase "as soon as circumstances permit" in paragraph 2 (b) was too subjective and should be reworded to indicate a more clearly defined procedure for the return of the person concerned. A written proposal (A/AC.252/1997/WP.13) and some oral amendments were submitted to that effect.

96. Some delegations suggested that a provision should be included granting immunity of the transferred person from arrest and prosecution. Other delegations were of the opinion that the article should include a provision to the effect that the transferred person should receive at least similar treatment in the requesting State that he would have received in the sending State. The view was also expressed that a provision protecting the human rights of the transferred individual should be inserted in the article. Proposals were submitted reflecting this notion (A/AC.252/1997/WP.9 and 13). Still other delegations suggested that all possible conditions need not be listed in the article, leaving it for the cooperating States to agree on the specific conditions of the transfer.

97. There was also some discussion regarding the allocation of the financial burden of the transfer arrangements. While some were in favour of cost-sharing between requesting and sending States, others were of the view that the requesting State should bear the costs.

98. A suggestion was made to add a new paragraph at the end of article 10, in order to guarantee the return of the person transferred to the State from which that person had been transferred, regardless of any reason or excuse that might be invoked to the contrary.

Article 11

99. Several delegations were of the view that the article needed to be expanded along the lines of article 4 of the Hostages Convention. It was felt additionally that preventive measures should also be taken in case of financial preparations to commit an offence. Some delegations expressed their preference for keeping the wording of the working paper, while others suggested changes to make the contents of the provision more precise. A view was further expressed that the draft convention should have a review mechanism for its implementation.

Article 12

100. On article 12, the remark was made that a similar provision was not found in the other United Nations conventions against terrorism. It was suggested that the provision should be made discretionary rather than mandatory. An attempt was made in another proposal to improve the drafting by following the wording of the Convention on the Safety of United Nations and Associated Personnel. An additional proposal sought to ensure that the information regarding the outcome of the proceedings would be made available to all States. A proposal was also made that the Secretary-General should have a more substantive and active role than currently proposed in the draft convention.